

The Ameritech/Qwest arrangement will also subject AT&T and other long distance carriers to risks of subtle discrimination and to the costs of monitoring Ameritech's behavior that are the very reason that first federal courts and then Congress prohibited Ameritech and other BOCs from marketing or otherwise providing long distance services while they possess local monopolies. McMaster Aff. ¶¶ 34-38. Here, too, the MFJ and Section 271 represent determinations that there is no adequate after-the-fact damages remedy in this circumstance, and that only an injunction can prevent the resulting harms to competition from such arrangements.

The overriding fact is that the arrangement with Qwest would, unless enjoined, give Ameritech a direct financial stake in Qwest's success, because each additional customer that Ameritech signs up for Qwest will generate more revenue and profits for Ameritech. Ameritech thus has a financial incentive to do whatever it can to make Qwest's services as attractive as possible to prospective customers. Id. ¶¶ 34-35.

The history of the MFJ and the findings that led to its entry establish that there are a nearly infinite number of competitively significant ways in which Ameritech could use its local monopoly to discriminate in favor of Qwest, but that are, as a practical matter, unlikely to be detected -- much less proven. These range from giving Qwest advance notice of changes in the pricing and physical characteristics of Ameritech's monopoly facilities, to developing facially neutral access pricing plans that in fact favor

Qwest, giving Qwest preference in establishing new access services or installing existing ones, using customer proprietary network information in marketing services for Qwest, making representations to individual customers that are improper, or offering improper "rebates" of access charges to Qwest through the marketing and related services that no other long distance carrier can obtain. In this regard, there is even now a clear risk that Ameritech will do so if the arrangement is not enjoined. Id. ¶¶ 37-41.

In all events, regardless of whether such discrimination actually occurs or can be proven, the effect of the Ameritech/Qwest arrangement will be to impose costs on AT&T and other long distance carriers that Ameritech and Qwest do not incur. In particular, while neither Qwest nor Ameritech face any risk of being discriminated against by the local monopolist in the Ameritech region, AT&T and other long distance carriers will face a substantial risk of such discrimination so long as Ameritech has a financial incentive to favor Qwest or any other individual long distance carrier. AT&T and other long distance carriers will thus have to incur substantial direct and indirect costs of monitoring Ameritech's behavior to try to ascertain whether they have been victims of any illicit discrimination or cross-subsidies and, if so, whether there is a remedy that can be pursued effectively. AT&T and other long distance carriers thus will incur the direct costs of dotting every "i" and crossing every "t" in dealing with Ameritech to eliminate any pretext for it to discriminate, of

attempting to measure their treatment by Ameritech as compared to Qwest's in the pricing and provisioning of Ameritech's monopoly access facilities, of reviewing each and every tariff filing in Ameritech's five states to assure there is no hidden preference for Qwest, and of devoting substantial management time that should be spent on improving the quality or reducing the cost of services, rather than on these monitoring efforts. Id. ¶¶ 35-38.

It was because these artificial costs constitute a barrier to entry -- and because there was no other adequate remedy -- that the MFJ court and then Congress prohibited Ameritech and other BOCs from providing long distance services while they have local monopolies. These determinations establish that AT&T and other carriers will be irreparably harmed if Ameritech's arrangement with Qwest is not enjoined pending this court's final determination of the merits of plaintiffs' claims that this arrangement is unlawful. See Rent-A-Center, Inc. v. Canyon Television and Appliance Rental, Inc., 944 F.2d 597, 602 (9th Cir. 1991); Ross-Simons of Warwick v. Baccarat, Inc., 102 F.3d 12, 19-20 (1st Cir. 1996).

**C. The Arrangement Is Against The Public Interest Because It Will Irreparably Harm Actual Or Prospective Local Services Competition And The Objects Of Sections 251-53 As Well As Section 271 Of The Communications Act.**

Finally, because the Ameritech/Qwest alliance allows Ameritech to profit from the long distance business without opening its local markets to competition, it will, unless enjoined, irreparably harm AT&T and other carriers (such as McLeod, Focal, KMC, and NEXTLINK)

who are seeking effectively to compete with Ameritech's local monopolies, as well as substantially undermine a central objective of the Communications Act. Ameritech's CEO Richard Notebaert has stated that he regards it as is "impossible" to comply with competitive checklist as required by the FCC's Ameritech Michigan Order.<sup>20</sup> This checklist, however, contains the core market-opening requirements that a BOC must meet under Section 271 before it is permitted to offer in-region, interLATA services. See 47 U.S.C. § 271(c)(2)(B). Plainly, the Ameritech joint marketing alliance is an effort to leverage the value of its local exchange monopoly into the long distance market while evading the fundamental market-opening requirements of the 1996 Act.

If Ameritech is permitted to bypass the competitive checklist and offer long distance service before it has opened its local markets to competition, the primary function of Section 271 -- to prevent BOCs from providing long distance service until they have opened their networks to competitors -- will be eviscerated. Ameritech will then be able to use its local monopolies to gain the very advantages that Section 271 was enacted to prevent.

Moreover, if Ameritech is permitted the benefits of in-region, interLATA entry without being required to open its local markets to competition, it will lose all incentive to open those markets in the future. It will be able to retain its local monopoly while

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<sup>20</sup> Communications Daily (Oct. 29, 1998) (statement of Richard Notebaert).

reaping the benefits of its long distance marketing efforts, and competition in both long distance and local markets will be harmed. That will irreparably harm AT&T and other carriers who are seeking to compete with Ameritech in the local services market. McMaster Aff. ¶¶ 39-40.

**III. A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION WOULD CAUSE NO UNDUE HARM TO OTHERS.**

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Finally, in contrast to the irreparable harm to AT&T, other carriers, and the public interest that will result in the absence of a stay, a stay will cause no undue harm to Ameritech or Qwest. Ameritech plainly would not have been permitted to engage in a joint marketing alliance with an interexchange carrier under the terms of the MFJ. Thus, since the break-up of the Bell system in 1982, Ameritech could not and did not create the kind of alliance it has now forged with Qwest. During that time, Ameritech and Qwest have marketed and provisioned local and long distance service, respectively, without benefit of a joint marketing arrangement. It would strain credulity to suggest that any further delay in joint marketing during the pendency of this lawsuit would cause undue harm to either Ameritech or Qwest. Moreover, even if this conduct were later held to be permissible, Ameritech could earn the same per-customer payments in the future that are available today. During the pendency of the lawsuit, Ameritech stands only to lose the present value of Qwest's payments to it during the term of the joint marketing arrangement. None of the

marketing opportunities it anticipates from its alliance will dissolve during this time.

CONCLUSION

For the reasons stated, plaintiff's motion for a temporary restraining order or a preliminary injunction should be granted.

Respectfully submitted,



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Dated: May 14, 1998

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

AT&T CORP., )  
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MCI TELECOMMUNICATIONS )  
CORPORATION, )  
 )  
ASSOCIATION FOR LOCAL TELE- )  
COMMUNICATIONS SERVICES, )  
 )  
McLEODUSA TELECOMMUNICATIONS )  
SERVICES, INC., )  
 )  
ICG COMMUNICATIONS, INC. )  
 )  
GST TELECOM, INC. )

No. \_\_\_\_\_

PLAINTIFFS )

vs. )

AMERITECH CORPORATION, )  
INC., )

DEFENDANT )

DECLARATION OF JOHN A. McMASTER

Pursuant to 28 U.S.C. § 1746, I, John A. McMaster,  
declare as follows:

1. I am Vice President, Consumer Markets Division of AT&T Corp. ("AT&T"). I have worked for AT&T since 1978. My business address is 295 N. Maple Avenue, Basking Ridge, New Jersey. I submit this declaration in support of AT&T's motion for an order requiring Ameritech Corporation ("Ameritech") immediately to cease

the joint marketing of its local services and the long distance services of Qwest Communications International Inc. ("Qwest") or any other long distance carriers in the five States where Ameritech has local monopolies. Earlier today, Ameritech announced that it was beginning this activity. This affidavit will explain that, unless this activity is stopped, AT&T (and other carriers) will incur harm that is irreparable and incalculable.

2. This Affidavit is divided into four parts. Part I describes the multitude of uncontrollable ways in which Ameritech could use its local telephone monopolies to shift business to any long distance carrier in whom Ameritech had a financial interest and explains that these are the reasons that the 1982 antitrust decree that broke up the former Bell System ("MFJ") and § 271 of the Communications Act have prohibited Ameritech and other Bell Operating Companies ("BOCs") from providing long distance service while they have local telephone monopolies.

3. Part II explains that Ameritech continues to have local monopolies throughout its region, and that Ameritech's § 271 application to the Federal Communications Commission to provide long distance service in one state has been denied for its failure to take the steps necessary to allow local competition.

4. Part III describes the Ameritech/Qwest Alliance, through which Ameritech will acquire an interest in the success of one long distance carrier (Qwest) and will use its local monopoly to give



Qwest artificial advantages over AT&T and other long distance carriers.

5. Part IV explains why and how these marketing activities will irreparably cause damage to AT&T, other carriers, and the public if the Ameritech/Qwest Alliance is not enjoined.

I. Ameritech, Its Bottleneck Monopolies, And The Equal Treatment Of All Long Distance Carriers Required by the MFJ and Sections 271 and 251(g) of the Communications Act.

6. Ameritech's Control Over Long Distance Carriers.

Ameritech is a BOC that provides local telecommunications services in specific geographic service areas (including most of the major metropolitan areas) in its five state territory in the midwestern United States.<sup>1</sup> In each of these service areas, Ameritech has long had a monopoly over the local telecommunications facilities that hook up every home and business. These Ameritech facilities are used to carry all local telephone calls between all these homes and businesses. The local network facilities are further connected to the long distance networks of AT&T, MCI, Sprint, WorldCom, Qwest, and other long distance carriers. Ameritech local facilities are used to originate virtually every long distance call that is placed in each of its service territories and to terminate virtually every

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<sup>1</sup> Ameritech's service territory covers portions of the following states: Illinois, Michigan, Wisconsin, Indiana, and Ohio.

long distance call that is placed to homes and businesses in its service territories.

7. These local monopolies give Ameritech control over long distance carriers that want to provide service to Ameritech's local customers and would give Ameritech an essentially uncontrollable ability to favor, and illicitly to shift business to, any long distance carrier in whose success Ameritech had a financial interest. This ability to discriminate exists, in the first instance, because no long distance carrier can effectively provide service to any business or residential customer unless the necessary facilities and physical connections are arranged by Ameritech and the prices (called "access charges," which may represent nearly 40% of the cost of a long distance call) that Ameritech charges for them are reasonable and nondiscriminatory. But the process of establishing the necessary physical connections is itself complex, subjective, and highly discretionary, and there are an infinite number of ways in which a BOC could discriminate in favor of an individual carrier in establishing new kinds of access facilities and in installing, maintaining, and repairing existing access facilities and services. Similarly, there are myriad ways in which the use of these facilities can be priced that would give a select long distance carrier immense cost advantages over its competitors.

8. Perhaps even more fundamentally, apart from the pricing, installation and maintenance of access facilities, Ameritech's

monopoly over local calling and other purely local services means that it has a vast array of other ways in which it could use its monopoly not just to favor any long distance carrier that it had a financial incentive to help, but virtually to assure that that long distance carrier receives vast amounts of business it otherwise would not obtain. For example, all residential customers, most small business customers, and even some larger customers will select their long distance service through the local telephone company when they first sign up for local telephone service. Ameritech thus administers the long distance "carrier selection" process in its service territories. If Ameritech's representatives told actual or prospective customers who contacted Ameritech that it recommended a particular long distance carrier or if they stated, or implied, that only that long distance carrier's services were available with Ameritech's local service, it would artificially shift large volumes of business to the preferred carrier for reasons having nothing to do with the price or quality of its services. Because some 20% of customers will move or otherwise place orders for new service in any given year, this itself gives Ameritech substantial control over a substantial percentage of long distance customers.

9. Further, Ameritech's direct contacts with these customers are not limited to the calls placed by customers seeking to order service. Virtually any time a customer has any question about telephone service or wants to change, or consider changing, some

feature of service, the customer will call Ameritech. Each such contact is an opportunity for Ameritech not just to market the long distance service in which it has an interest, but to urge and even pressure the customer to subscribe to it.

10. Ameritech's local monopoly means that it not only has unique credibility and leverage with its customers, but also that it alone has complete information concerning the usage and calling patterns and volumes of each customer in its service territories. If Ameritech engaged in marketing on behalf of an individual long distance carrier, Ameritech could readily use this "customer proprietary network information" to target the best customers and to make offers to them on the basis of information about them that no one else had. Although illegal, such conduct would be exceedingly difficult to detect.

11. Finally, in contrast to the calls that customers place to a carrier -- which are referred to as "inbound telemarketing" -- long distance carriers often engage in "outbound telemarketing," when a representative of a particular carrier will telephone prospective customers and try to persuade them to switch to its service from that of a competing carrier. If Ameritech engaged in this activity, its local monopoly would then give it the same leverage and other unique advantages that are discussed above.

12. The MFJ And SS 271 & 251(g). Prior to January 1, 1984, Ameritech and other BOCs had been part of the former Bell System and had both themselves provided long distance services to residential and business customers and had been affiliated with a carrier (the Long Lines Division of AT&T) that provided specialized long distance services. Through their monopoly position, the BOCs and AT&T had more favorable access to the BOCs' monopoly assets, and therefore were able to provide higher quality long distance service at lower cost than any potential rival, and to exploit their unique access to information about the BOCs' local customers. After competition in the provision of long distance services became technologically possible and was authorized by the FCC, long distance carriers and other competitors repeatedly claimed that the BOCs had used their local telephone monopolies to discriminate in favor of their own long distance services. These and similar claims led to some 70 private antitrust suits and a government suit, as well as regulatory proceedings that sought to develop rules and reporting and other requirements that would make it more difficult for BOCs to engage in this discrimination.

13. In United States v. AT&T, No. 74-1698 (D.D.C.), the United States contended that the integration of local telephone monopolies and competitive long distance businesses was inherently anticompetitive and would operate as a powerful impediment to competition so long as it was maintained. In particular, the

United States claimed that neither regulation nor after-the-fact antitrust remedies could be adequate to prevent harm to actual or potential long distance competitors because: (1) much BOC discrimination that was competitively harmful was so subtle that it could not be detected, (2) even if discrimination was detected, a BOC could impose immense litigation costs and uncertainty over the availability of after-the-fact relief by claiming that its conduct was a legitimate efficiency of integrated services that was good for consumers or a good faith response to regulatory policies, and (3) in all events, monitoring BOC behavior to prevent or identify discrimination imposed immense costs on actual or potential competitors (and the public) that itself gave the BOCs illicit advantages over carriers who sought to compete with them.

14. The Bell System consented to a decree that granted the precise relief the United States had sought -- the MFJ -- because it ultimately agreed that only a structural remedy that eliminated any "incentive" for the BOCs to engage in discrimination could eliminate the litigation and monitoring costs that were crippling the Bell System and the rest of the industry.

15. Under the MFJ, Ameritech and the other BOCs were not only prohibited from providing any long distance ("interexchange" or "interLATA") services while they had local monopolies, but also were subject to nondiscrimination and other "equal access" requirements. These expressly required that each BOC treat all

interexchange carriers equally in all respects and prohibited any form of favoritism of one interexchange carrier over another.

16. Under the MFJ, BOCs could not endorse or recommend the service of any individual long distance carrier. They could not provide any carrier with preferential access to Ameritech's monopoly services or facilities, or directly or indirectly give any individual long distance carrier the benefits of customer or other information that Ameritech and other BOCs controlled. When new or existing local service customers contacted them, Ameritech and other BOCs were required merely to provide a list of all the long distance carriers that offered service to customers in that area and tell the customer to select one of those carriers. Customers would then make long distance carrier selection decisions based solely on their views of the price, features, and quality of the different carriers' services.

17. Similarly, Ameritech and other BOCs were prohibited from having any direct financial interest in the success of any individual long distance carrier. The only payments the BOCs were allowed to receive from any long distance carriers were nondiscriminatory charges for the "access service" of originating and terminating long distance calls over its local monopoly networks, for administering the carrier selection process, and for providing billing and collection services. Other long distance carriers thus had no reason to fear discrimination and no reason to engage in costly monitoring of Ameritech's and other BOCs' pricing

and provisioning of monopoly access facilities, of Ameritech's conduct when it engaged in inbound or outbound telemarketing, or of any other aspect of the carrier selection process.

18. While competition in the long distance market was trivial when the MFJ was entered, it exploded thereafter. Numerous carriers entered the market, and prices dropped by well over 50%.

## II. Ameritech Has Not Opened Its Local Markets To Competition.

19. In 1996, the MFJ was superseded by amendments to the Communications Act that codify the core of the MFJ. After codifying the MFJ's equal access requirements, these new provisions prohibit Ameritech and other BOCs from "provid[ing] interLATA services" -- with a few explicit exceptions -- unless and until they allow long distance (and other) carriers to offer local and access services at the same terms, and economic cost, that the BOC enjoys. This reflects the commercial reality that if a BOC entered long distance and were the only carrier that could jointly offer local and long distance service in a single package, the BOC would monopolize the long distance business of the substantial number of customers who want to engage in "one stop shopping" and obtain local and long distance jointly. AT&T (and many others) have sought to enter local markets and compete with the local monopolies throughout the nation.

20. Under the Act, Ameritech cannot provide interLATA services originating in any one of its five States unless it has,



at a minimum, implemented a "competitive checklist" of specific provisions necessary to allow effective local services competition and unless the FCC has approved its application by finding not only that the checklist has been implemented, but also that Ameritech's provision of interLATA services is "consistent with the public interest, convenience, and necessity," and will comport with the separate affiliate and nondiscrimination requirements of § 272.

21. In the words of one BOC President, "[a] lot of us Bells are frustrated" by the need to meet a "cumbersome" checklist.<sup>2</sup> The FCC, however, has made explicit that the competitive checklist is critical to opening local markets to competition and that it therefore must be fully implemented before a BOC can offer in-region, interLATA service.<sup>3</sup> However, Ameritech's only application to the FCC for authority to provide interLATA services to customers in one of its states (Michigan) was soundly rejected by the FCC.<sup>4</sup> Specifically, the FCC found that Ameritech had failed to develop the interfaces critical to providing nondiscriminatory access to certain network elements, had not provided other competing local

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<sup>2</sup> John J. Keller and Stephanie N. Mehta, U S WEST Strikes Marketing Alliance With Owest in Bold Move Skirting Rules, The Wall Street Journal, p. A2 (May 7, 1998) (statement of U S WEST President Solomon Trujillo).

<sup>3</sup> See In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (Aug. 19, 1997) ("Ameritech Michigan Order").

<sup>4</sup> See Ameritech Michigan Order, ¶ 1.

exchange carriers adequate interconnection to its own monopoly network, and had not provided the nondiscriminatory access to life-saving 911 services that is required by section 271.<sup>5</sup> In the months following denial of its Section 271 application, Ameritech has not taken the steps that are required by Section 251 and by the competitive checklist to open its markets to competition. Indeed, in late 1997, Ameritech's CEO Richard Notebaert stated that compliance with the checklist is "impossible," and that it would require "more than year's work."<sup>6</sup> Ameritech has thus unquestionably failed to open its local markets and is prohibited by § 271 from providing interLATA services to customers in each of its five States.

### III. The "CompleteAccess" Program And Use of Ameritech's Local Monopoly To Confer Artificial Advantages Upon Qwest.

22. On May 14, 1998, Ameritech announced the so-called "CompleteAccess" program, a local and long distance marketing alliance with Qwest.<sup>7</sup> As a result of this Alliance, Ameritech will

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<sup>5</sup> Id., ¶¶ 105-279.

<sup>6</sup> Communications Daily, October 29, 1997.

<sup>7</sup> Just last week, Qwest entered into a similar alliance, called the "Buyer's Advantage Program," with U S WEST Communications, Inc., the BOC that is the monopoly provider of local exchange services in its service territory in 14 states in the western United States. On May 13, 1998, AT&T, MCI Telecommunications Corporation, the Association for Local Telecommunications Services, McLeodUSA, ICG Communications, Inc. and GST Telecom, Inc. filed suit against U S WEST in the Western District of Washington, (continued...)

no longer be neutral in its treatment of long distance carriers; rather, it will actively market and promote the service of a single long distance carrier (Qwest) in exchange for a fee. It will use inbound and outbound telemarketing to inform customers that they can receive Qwest long distance service in connection with Ameritech local service and to urge customers to do so. In return, Ameritech will get an undisclosed fee for each customer it signs up for Qwest long distance.<sup>3</sup> Thus, Ameritech will have a direct financial stake in Qwest's success by earning some unspecified amount for each customer it attracts to Qwest.

23. The Ameritech/Qwest Alliance ends the neutrality in Ameritech's treatment of long distance carriers that has been required since the MFJ was implemented. It is my understanding that Qwest is the only carrier that has been selected by Ameritech for this Alliance, and to the best of my knowledge, neither Ameritech nor Qwest has publicly disclosed the terms and conditions of their Alliance. According to Qwest President Joseph P. Nacchio, Ameritech will offer its CompleteAccess program to other carriers, but has not explained how such multi-carrier participation will work. Indeed, the very nature of the Alliance -- preferred

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seeking a temporary retraining order, or in the alternative, expedited preliminary injunction, to enjoin U S WEST from engaging in its marketing arrangement with Qwest.

<sup>3</sup> Stephanie B. Mehta, Ameritech, Qwest Join In Long-Distance Pact, Wall Street Journal, p. B6 (May 13, 1998).

marketing status in exchange for a fee -- is inconsistent with broad-based participation by all or even multiple interexchange carriers.

24. Furthermore, even if Ameritech does extend its Alliance offer to other carriers, no carrier can obtain the same benefits that Qwest, as the first carrier selected by Ameritech, has secured. Upon entering into a similar marketing alliance with U S West last week, see supra, n. 6, Qwest's CEO emphasized this advantage, stating that even if other carriers join the alliance, Qwest alone will enjoy a "first mover advantage" in offering long distance bundled with local service: "[T]ime to market is extremely important here. Also, since this is the only offer that [the BOC] ha[s], this is the one they will be marketing. . . . [F]irst mover advantage . . . is very compelling."<sup>9</sup> As one industry analyst discussing the Qwest/U S WEST alliance has noted, such an arrangement will "accelerate [Quest's'] penetration in [U S WEST's] service territory on a first to market basis."<sup>10</sup> This analysis applies with equal force to the Ameritech/Qwest Alliance. Thus, even if other carriers agreed to the same terms and conditions as Qwest, they will receive substantially less in return. Ameritech therefore has conferred a discriminatory advantage on one interexchange carrier.

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<sup>9</sup> Qwest/U S WEST Press Conference Transcript, p. 9.

<sup>10</sup> UBS Securities Equity Research, USW: Marketing Alliance With QWEST Enhances Full Service Capability (May 7, 1998).

IV. Ameritech's Joint Marketing Arrangement Will Cause Harms To AT&T That Cannot Be Readily Quantified And That Are Irreparable.

25. There are at least three respects in which Ameritech's arrangement with Qwest will cause harm to AT&T and other carriers that cannot be quantified and that can only be prevented by an order that the joint marketing and related activities cease immediately. First, the Alliance will cause a large shift in AT&T's customer base to Qwest and harm to AT&T's reputation and goodwill that cannot be remedied even if the Alliance is ordered to cease at some future date. Second, because Ameritech will have the incentive and ability to engage in a host of subtle forms of discrimination in the pricing and provisioning of access services and in the carrier selection process, AT&T and other long distance carriers will incur incalculable direct and indirect costs of monitoring Ameritech's behavior, of evaluating, challenging, and attempting to prove suspected acts of discrimination, and of suffering the consequences of discrimination that is unproven. Third, by allowing Ameritech to profit from the long distance business in other ways, the Alliance will eliminate Ameritech's incentive to open its local market and delay AT&T's and other carriers' entry.

26. Irreparable Loss of Business And Damage to Goodwill. The Ameritech marketing Alliance will unfairly shift customers from AT&T to Qwest. This shift will not result from traditional

competitive forces of price or product quality, but will result from Ameritech's leveraging of its local exchange monopoly position into the long distance market. Indeed, Qwest's President and CEO has openly acknowledged that its decision to enter into a similar joint marketing arrangement with U S West was grounded in an understanding that its unique relationship with a BOC would assure that it captures a significant portion of the long distance market that Qwest would not otherwise now obtain:

"We are being conservative in our estimates on the impact on our business, but if you look at most of the market research most people believe about half the market will buy bundled; and if you look at what the anticipation is for when a Bell Operating Company is able to offer a package, you know people would expect 25-35% of the share of customers would vote that way."<sup>11</sup>

Market analysts are also predicting substantial market share gains for Qwest, and at least one analyst has assumed that Qwest will capture 800,000 customers through its alliance with U S WEST in the first year alone.<sup>12</sup> Such predictions of dramatic market share gains are already proving true: U S WEST has reported that it has signed up 40,000 customers for Qwest service in the first three days of its marketing alliance.<sup>13</sup> Further, as Qwest's President and CEO Joseph Nacchio stated earlier today, Ameritech serves significantly

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<sup>11</sup> Qwest/U S West Press Conference Transcript, p.3.

<sup>12</sup> USW Announces That It Will Market Qwest's Long Distance Service, Prudential Securities (May 7, 1998).

<sup>13</sup> Stephanie B. Mehta, Ameritech, Qwest Join In Long-Distance Pact, Wall Street Journal, p. B6 (May 13, 1998).

more local customers than does U S WEST, so the Ameritech/Qwest alliance is likely to allow Qwest to capture proportionately more customers.

27. Actual market experience in Connecticut further supports these expectations. In Connecticut, the incumbent local exchange carrier (SNET) is not a "Bell operating company" and is not prohibited from providing in-region, interLATA long distance services. SNET, however, retains monopoly control of its local markets and has not taken the steps required under the Act to open its local markets to competition. SNET began marketing some interLATA services in 1994 but did not initiate any major marketing to residential and small business customers in Connecticut until 1996.<sup>14</sup> It then quickly captured some 25% of the Connecticut long distance market by offering long distance service in connection with its local service. As a recent study conducted for AT&T demonstrates, the Connecticut experience is powerful evidence of the ability of a local exchange monopolist to attract large numbers of long distance customers not through superior product or pricing, but through leveraging of its local monopoly into long distance by jointly offering and marketing local and long distance service in a single package.<sup>15</sup>

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<sup>14</sup> Prior to 1996, SNET offered long distance service primarily through its affiliate SONECOR, whose activities were targeted to large business customers inside and outside of Connecticut.

<sup>15</sup> Lee L. Selwyn, Helen E. Golding, Susan M. Gately, The  
(continued...)

28. In addition to the loss of existing customers to Qwest, the Alliance will severely harm (in ways that cannot readily be quantified) AT&T's ability both to win future customers from Qwest and to win back customers that it has lost to Qwest. Qwest's president and CEO has predicted that its marketing partnership with US WEST will "cut our . . . customer churn by 75%."<sup>16</sup> There is no reason to expect that this prediction is unique to the U S WEST/Qwest alliance, and every reason to expect that Qwest expects a similar reduction in churn through the Ameritech Alliance. Such predictions of dramatically reduced churn, in an industry where over 56 million customers change long distance carriers annually, further underscores Qwest's competitive advantage. Plainly, Qwest believes and understands that far fewer customers will switch away from its service because of the BOC's endorsement and marketing efforts and the fact that only Qwest can offer a long distance service that is packaged with local service and affords genuine "one-stop shopping." The effect of this reduced churn rate would be directly to limit the number of customers that AT&T can attract to its own service from Qwest's.

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"Connecticut Experience" With Telecommunications Competition: A Case Study In Getting It Wrong (Economics and Technology, Inc., Feb. 1998), p. 9

<sup>16</sup> John Keller and Stephanie N. Mehta, U S WEST Strikes Marketing Alliance With Qwest in Bold Move Skirting Rules, The Wall Street Journal, p. A2 (May 7, 1998).



29. While it would be possible to calculate some elements of the losses that AT&T would thus incur, AT&T will suffer other losses that cannot be readily calculated. Once a customer leaves AT&T, no subsequent marketing efforts, alliances, or even court decrees can guarantee return of that customer to AT&T, so the effect of the Alliance would be permanent losses of some customers AT&T would otherwise retain. The goodwill associated with the customer, and the future revenue that the customer would have generated, is irretrievably lost. Further, it would be very difficult, if not impossible, to calculate the damage incurred by AT&T's lost opportunity to win customers from Qwest.

30. Moreover, by endorsing Qwest as its preferred long distance carrier and packaging its service only with Qwest's, Ameritech would cause irreparable harm to AT&T's goodwill. In the time since AT&T first began offering consumers long distance services in 1984, it has amassed tremendous goodwill by offering high quality services at ever declining prices and by providing superior customer care, service, and support. It has a strong reputation for quality that it earned while competing on a level playing field with many other long distance carriers and without any endorsement or assistance from Ameritech or other BOCs.

31. In addition to the customers that will be artificially shifted to Qwest as a result of Ameritech's marketing, endorsements, and related activities, these activities will damage the goodwill that AT&T has earned with all customers. By endorsing